

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

SALVADOR V. PORTILLO.

Plaintiff,

v.

ROBERTO CASTILLO, d/b/a of R & C  
CLEANING SERVICES,  
Defendants

05 10600 RCL

Civil Action No.

RECEIPT #

AMOUNT \$

SUMMONS ISSUED

LOCAL RULE 4.1

WAIVER FORM

MCF ISSUED

BY DPTY. CLERK

DATE

COMPLAINT AND JURY DEMAND

INTRODUCTION

MAGISTRATE JUDGE

JLA

1. Plaintiff brings this action pursuant to the Fair Labor Standards Act of 1938 ("FLSA"), 29 U.S.C. §201, et seq., seeking to recover damages for unpaid overtime compensation in willful violation of the FSLA.

JURISDICTION AND VENUE

- 2 This Court has jurisdiction over the subject matter of this action pursuant to 29 U.S.C. §216(b). The Court also has jurisdiction under 28 U.S.C. §1331.
3. Venue is proper pursuant to 28 U.S.C. §1391 because the Plaintiff resides in this judicial district.

PARTIES

1. Plaintiff is Salvador V. Portillo. He is a resident of Everett, Massachusetts and a citizen of El Salvador.
2. Defendant Roberto Castillo is natural person who resides at 200 Park Terrace

Drive, Stoneham, MA and formerly doing business at 28 Starbird Street, Malden, MA.. At all relevant times he has done business as R & C Cleaning Services.

3. Defendant R & C Cleaning Services is a Massachusetts entity doing business at 200 Park Terrace Drive, Stoneham and formerly doing business at 28 Starbird Street, Malden, MA.
4. At all relevant times Defendants had employees handling, selling, or otherwise working on, goods or materials that have been moved in or produced for commerce by any person.
5. At all relevant times Defendants had an annual gross volume of sales made or business done of not less than \$500,000.
6. Plaintiff worked for Defendant from February 1, 2001 to April 25, 2003.
7. During the course of his employment Plaintiff regularly worked forty (40) hours per week at \$9.00, \$9.25 and \$9.50 per hour (hereinafter "straight time"). He also worked a total of one thousand one hundred and fifty (1,150) hours of overtime, that is, hours in excess of forty (40) per week, for which he was always paid only straight time and never paid time and one half.
8. Defendants acted willfully and were not acting in good faith when they failed to pay overtime wages of one and one-half times Plaintiff's regular hourly rate when same was due.

CLAIM: VIOLATION OF FAIR LABOR STANDARDS ACT:

9. Plaintiff repeats, realleges, and incorporates by reference paragraphs 1 through 8 with the same force and effect as if fully set forth herein.
10. Defendants had an obligation to pay Plaintiff overtime pay of one and one-half his regular rate for all hours worked in excess of forty in a workweek.
11. Defendants intentionally, willfully and deliberately failed to pay Plaintiff overtime wages of one and one-half times his regular rate when same was due.
12. Defendants had no reasonable grounds for failing to pay overtime wages of one and one-half times Plaintiff's regular hourly rate to him when same was due.
13. Defendants knew, or should have known that, in failing to so pay, they were violating the provisions of 29 U.S.C. §§ 207(a)(1) and 215(a)(2).
14. Pursuant to 29 U.S.C. §216(b), Defendants are liable to Plaintiff for the violation of 29 U.S.C. §207(a) as set forth herein.
15. Within the last three years time Plaintiff has suffered four thousand one hundred and fifty four and 43/100ths dollars (\$4,154.43) in damages on account of Defendants' violations of the FLSA.
16. Plaintiff is entitled to double (liquidated) damages on this amount pursuant to 29 U.S. §216(b).
17. Plaintiff has given written consent to the filing of this action, pursuant to 29 U.S.C. §216(b) (See Exhibit A hereto).

**PRAYERS FOR RELIEF**

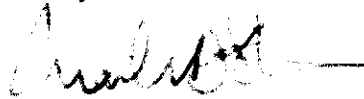
WHEREFORE, Plaintiff prays that this Court:

1. Award Plaintiff damages for unpaid overtime compensation, plus, as liquidated damages, an additional sum equal to the amount of unpaid overtime compensation.
2. Award Plaintiff the costs and other disbursements of this action, including but not limited to, reasonable attorney's fees, accountant's and expert's fees;
3. Award Plaintiff prejudgment interest;
4. Grant the Plaintiff such other and further relief as this Court may deem just, proper, and equitable.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted,

By His Attorney,



Mark D. Stern  
BBO #479500  
Mark D. Stern, P.C.  
34 Liberty Avenue  
Somerville, MA 02144  
(617) 776-4020  
Fax (617) 776-9250  
Email:sternbarker@att.net

Dated: March 29, 2005

CONSENT FORM

Pursuant to 29 U.S.C. §216(b) and Section 5(a) of the Portal-to-Portal Act of 1947, I hereby consent to be a plaintiff in a civil action seeking damages under the Fair Labor Standards Act of 1938. I further consent to my attorney's filing of such a civil action.

  
\_\_\_\_\_  
Salvador V. Portillo

Date: March 28, 2005



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Salvador V. Portillo, v. Roberto Castillo

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases  
740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

05 10600 RCL

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

none known

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☒ NO ☐

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☒ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Mr. Mark Stern  
34 Liberty Ave  
ADDRESS Somerville, MA 02144-2022

TELEPHONE NO. 617 776 4025

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Salvador V. Portillo

(b) County of Residence of First Listed Plaintiff Middlesex  
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorney's (1) Mark Stern  
34 Liberty Ave  
Somerville MA 02144

(ne Number)

Mark D Stern PC  
617 776 4020

## DEFENDANTS

Roberto Castillo  
RCC Cleaning ServicesCounty of Residence of First Listed Defendant Middlesex  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff (For Diversity Cases Only))

- Citizen of this State ☐ 1 ☒ 10600 RCL
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS--Third Party 26 USC 7609	

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

29 USC 201 e/sq.

Brief description of cause:

Failure to pay 1 1/2 base wage for overtime

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

\$8300 plus

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

3/29/05

SIGNATURE OF ATTORNEY OF RECORD

Mark D Stern

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE